

WATER COUNCIL MEETING

NH Dept. of Environmental Services
29 Hazen Dr., Concord, N.H.

January 8, 2020
8:30 a.m.

Members present: Chairman Gilbert Councilors: Boisvert, Butler, Gegas, Geisser, Joubert, O'Brien, Spaulding, and Tremblay

Members absent: Councilors DeCurtis, Hardy, Henderson, and Rawnsley

Also present were Carolyn Guerdet, Council Clerk and Paula Scott, Appeals Clerk

Chairman Gilbert called the meeting to order at 8:34 a.m.

1. Approval of Minutes of the October 9, 2019 Meeting

- ***Councilor Boisvert made a motion to accept the October 9, 2019 minutes, second by Councilor Spaulding. Motion passed unanimously with Chairman Gilbert and Councilor Butler abstaining.***

2. Status of Appeals

Paula Scott, Appeals Clerk

I. New Appeals

Docket No. 19-22 WC – Nathan R. Fogg Appeal

Subject: 10/719 Denial of Application for Septic System Designer License

Hearing Officer: Not assigned

Status: 11/12/19 received Notice of Appeal. 11/15/19 issued receipt of Appeal letter. Appeal was untimely and insufficient. Council to accept or decline Appeal today.

- ***Councilor Butler made a motion to deny the Appeal, second by Councilor Spaulding. Motion passed unanimously.***

II. Decision and Orders that need to be written finalized and issued.

Docket No. 17-06 WC – Town of Hampton, NH, North Hampton Water Commission and Town of North Hampton Appeal

Subject: 03/29/17 Administrative Order No. 17-006 WD issued to Wiggin Way home Owners Association AND Aquarion Water Company of NH, Inc.

Hearing Officer: David Conley, Esq., assigned on 5/17/17

Recused member: Councilor Boisvert

Status: April 28, 2017 received Notice of Appeal. May 1, 2017 issued receipt of Appeal letter.

Council accepted the appeal at the May 10, 2017 meeting. 5/16/17 received Assented-To Motion to Consolidate (Docket No. 17-06 WC and Docket No. 17-07 WC). Hearing is scheduled for April 10, 2019 at 9 a.m. 4/10/19 Hearing was held and continued to May 8th. Continued Hearing was held June 12, 2019 at 9 a.m. and then continued to July 15, 2019 at 8:30 a.m. Hearing was continued to July 16, 2019 where the record was closed and deliberations were held. Hearing Officer to issue Decision within 90 days. October 9, 2019 received Appearance of Robert Bersak for Aquarion Water Company. 10/22/19 distributed Draft Decision and Order to Council for comments. 10/25/19 issued Final Decision and Order on Notice of Appeal. No Motion for Reconsideration was received. Docket is closed.

III. Hearings or PHCs Pending**Docket No. 18-09 WC Rae-Ann Melacon and Suzanne Fournier Appeal**

Re: June 18, 2018 approval of Alteration of Terrain Permit No. AoT-1437 issued to Leighton A. White, Inc.

Hearing Officer: David Conley, Esq., assigned on 9/17/18

Recusals: Councilor Henderson

Status: July 5, 2018 received Notice of Appeal. 7/16/18 issued receipt of Appeal letter. 7/20/18 received Appearance of Biron Bedard and Motion to Intervene. 7/24/18 received Appearance of Christopher Aslin for the department. Council accepted Appeal September 12, 2018. 9/13/18 issued Appeal accepted letter. 9/20/18 issued Notice of Pre-hearing Conference scheduled for October 22, 2018 at 1 p.m. 9/20/18 received Appearance of Attorneys Michael Schowalter and Richard Head for the Appellants. October 2, 2018 received Assented to Motion to Continue Pre-hearing Conference. 10/4/18 issued letter granting Motion to Continue PHC and rescheduling it for November 7th at 9 a.m. November 7, 2018 issued Pre-hearing Order scheduling hearing for May 8, 2019 at 9 a.m. April 5, 2019 received Permittee's Witness and Exhibit List. 4/8/19 received State and Appellants' Witness and Exhibit Lists. 4/12/19 issued Notice of Rescheduled Hearing from May 8th to August 14, 2019 at 9 a.m. 4/19/19 rec'd State's Assented-To Motion to Extend Motions Deadlines. 4/24/19 issued letter ruling granting Assented-To Motion to Extend Motions Deadlines. 4/24/19 received Motion to Continue Hearing. 4/30/19 issued ruling granting Motion to Continue Hearing. Hearing is rescheduled to September 11, 2019 at 9 a.m. August 26, 2019 Appellants' Motion to Amend Exhibit List and Amended Exhibit List received. September 3, 2019 received Intervenor's Objection to Appellant's Motion to Amend Exhibit List. 9/6/19 issued ruling granting Motion to Amend Exhibit List. Hearing was held September 11, 2019 at 9 a.m. and was continued to October 9, 2019 at 9:30 a.m. 9/20/19 received State's Assented to Motion to Continue Hearing. 9/25/19 issued ruling granting State's Assented-to Motion to Continue Hearing and rescheduling it for January 8, 2020 at 9 a.m. 9/27/19 issued letter confirming parties' agreement to submit post-hearing memoranda on December 20, 2019. 12/19/19 received Intervenor's Post Hearing Memorandum. 12/20/19 received Appellants' Post Hearing Memorandum. 12/20/19 received State's Memorandum of Law. The Continued Hearing is scheduled for today.

Docket No. 19-07 WC – Charles Hildreth and Suzanne Fournier Appeal

Subject: 04/22/19 Approval of AoT-1588 permit issued to Frank Burpee

Hearing Officer: David Conley, Esq., assigned on 6/14/19

Status: May 21, 2019 received Notice of Appeal. 5/23/19 issued Receipt of Appeal letter. Council accepted Appeal June 12, 2019 with Councilor Henderson abstaining. 6/13/19 issued Appeal accepted letter. 6/20/19 issued Notice of Pre-hearing Conference scheduled for July 24th at 10 a.m. 7/24/19 issued Pre-hearing Order. August 19, 2019 received Appellant's Brief on Position on Enforcement and Update on Access for Wildlife Survey. September 4, 2019 received Appearance of Atty. Christopher Aslin for the Department. 9/9/19 received State's Motion to Dismiss and reply to Appellants' Position on Enforcement. 9/12/19 received Objection to State's Motion to Dismiss. November 1, 2019 issued Order on State's Motion to Dismiss Appeal and Position on Enforcement; Motion was granted. Appeal was dismissed. Docket is closed.

Docket No. 19-16 WC (PNA) – Midlands Investments, LLC Appeal

Subject: 0711/19 Denial of AoT permit application #181224-189

Hearing Officer: David Conley, Esq., assigned on 10/11/19

Status: September 23, 2019 received Petition for Appeal and Assented-To Motion to Stay. 9/26/19 issued Receipt of Appeal letter. Council accepted Appeal today, 10/9/19. October 11, 2019 issued Appeal accepted letter. 10/23/19 issued letter granting Assented-To Motion to Stay

and scheduled PHC for December 2, 2019 at 9 a.m. 12/2/19 issued Pre-hearing Order scheduling a second PHC for January 6, 2020 at 9 a.m. and Hearing for February 12, 2020 at 9 a.m. 12/19/19 received Assented-To Motion to Stay. 12/19/19 issued letter granting Assented-To Motion to Stay and rescheduled Hearing for June 10, 2020 at 9 a.m. 12/23/19 received Withdrawal of Counsel- Dana Bisbee. January 6, 2020 received Appearance from Allen Brooks.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

Docket No. 17-14 WC – Suzanne Fournier, et al. Appeal

Subject of Appeal: September 18, 2017, approval of Alteration of Terrain Permit No. AoT-1313 issued to the Town of Milford.

Status: December 20, 2019, The Supreme Court issued Mandated Order on Appeal and on Reconsideration. Council to act on Supreme Court order. Only action required is to remand back to the Department.

- ***Councilor O'Brien made the motion that the Council remand this Appeal back to DES for action that is consistent with the requirements of the Supreme Court, second by Councilor Boisvert. Discussion was held. Motion passed unanimously.***

3. New Business

- a. Water Division Update – Director O'Donovan. He began by thanking the Council for their service.

Continuing Resolution has ended, impacts concluding

1) Land Resources Management:

Wetlands: New wetlands rules are in effect, as are new rules for expediting permits

AoT: Chinook Solar Farm 30 MW 159 acres of panels, 581 acre site on wetlands (no impacts), Solar BMP's in draft use by April

AoT: Supreme Court Decision on Fournier Appeal of AoT permit with T&E species

2) PFAS Surface Water Quality Standards Plan submitted to legislature

PFAS Lawsuits and injunction

PFAS \$6 m funding for testing, staff, outreach, incinerator study, soil leaching and other areas.

3) Drinking Water Ground Water:

Arsenic new MCL to 5 ppb ongoing effective summer 2021, Pitcher Program moving forward effective Mar 2020, as is Lead testing in schools and day cares

Southern NH Interconnect Projects effective fall 2021 in Plaistow

4) Watershed:

Chlorides: new teammate and work on new legislation for voluntary Municipal certification.

Watershed: Site Remediation Programs Project completing, final enviro results in analysis

- 5) Merrimack River Watershed coordination concept development
 - 6) Dam:
 - Legislation for deadbeat dam owners
 - Capital budget, health and asset management
 - 7) Waste Water Engineering Bureau: Manchester's Combined Sewer Overflow (CSO) Consent Decree completed and approvals ongoing with Board of Alderman
 - 8) Lebanon completing CSO projects
 - 9) Powder Mill Fish Hatchery and five other hatcheries on ongoing NPDES with phosphorous
 - 10) Coastal:
 - NPDES permits on Great Bay and Conn River ongoing
 - Coastal Flood Risk Summary: Science completed with accepted Sea Level Rise forecasts and published
- Upcoming significant events:
- Legislative sessions
 - Capital Budget and Air and Water
 - Regulatory Conference, Sept 2020

Questions were addressed and discussion held.

8:47 Councilor Tremblay arrives.

4. Old Business

5. Next Meeting

February 12, 2020.

8:53 Councilor Joubert arrives.

The open position from the resignation of Councilor Beaurivage was discussed. Philip Croasdale has been nominated.

6. Adjournment

- ***Councilor Vegas made a motion to adjourn, second by Councilor Butler. Motion passed unanimously.***

Meeting was adjourned at 8:57 a.m.

**WATER COUNCIL
HEARING MINUTES**

January 8, 2020

The Water Council met for
Docket No. 18-09 WC – Rae-Ann Melancon and Suzanne Fournier Continued Appeal Hearing
Wednesday, January 8, 2020 in Rooms 112, 113, & 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman John Gilbert, Councilors: John Boisvert, Bill Gegas, Richard Geisser, Dave Joubert, Tom O'Brien and Gary Spaulding

Also present was: Paula Scott, Appeals Clerk

The Hearing was called to order by Hearings Officer David Conley at 9:10 a.m.

The Hearing record was closed at 11:00 a.m.

Deliberations were called to order at 12:10 p.m. and ended at 1:25 p.m.

Council voted to Remand the Appeal.